

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (Pacific Lines)

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company (Pacific Lines) that:

(1) Carrier violated the agreement between the parties when it required C. M. Berry, regularly assigned rest day relief employe, to perform service on other than his regular position, October 1 to November 7, 1952, inclusive.

(2) Carrier shall compensate claimant for the difference between the straight time rate paid and the time and one-half rate due, for services performed on his assigned rest days each Tuesday and Wednesday, October 1, 7, 8, 12, 15, 21, 22, 28, 29; November 3 and 4, 1952.

(3) Carrier shall compensate claimant at the straight time rate of his assigned position for all hours he was suspended from duty on his regular assignment between October 1 and November 7, 1952, inclusive.

(4) Claimant shall be allowed expenses in the amount of \$2.75 per day during the period involved.

**EMPLOYEES' STATEMENT OF FACTS:** There is in evidence an agreement between the parties bearing effective date of December 1, 1944 (Reprinted March 1, 1951, Including Revisions). The agreement and all amendments thereto are included, by reference, in this claim.

The position of Rest Day Relief Agent-telegrapher-clerk, Hayden and Hayden Junction was advertised for seniority choice to the telegraph service employes on the Tucson Division on Vacancy Notice No. 44 dated at Tucson, September 3, 1952, issued by the Superintendent of that Division. The working schedule of this position being:

Sun	2nd Teleg-Clerk, Hayden Junct	2:00 P. M.-10:00 P. M.	\$1.9025 per hr.
Mon	2nd Teleg-Clerk, Hayden Junct	2:00 P. M.-10:00 P. M.	1.9025 " "
Tues	Rest Day		
Wed	Rest Day		
Thurs	1st Teleg-Clerk, Hayden Junct	6:00 A. M.- 2:00 P. M.	1.9025 " "
Fri	1st Teleg-Clerk, Hayden Junct	6:00 A. M.- 2:00 P. M.	1.9025 " "
Sat	Agent, Hayden	8:00 A. M.- 5:00 P. M.	2.06 " "

Rule 9 of the current agreement reads:

"Regular assigned employes shall not be required to perform relief work except in cases of emergency. When used to perform such service, they shall receive the regular rate of the position upon which relieving but not less than the compensation they would have received on their regular assigned position. If any such employes would receive overtime rate through the application of Rule 7, on any day such service is performed the overtime rate shall apply on that day or days. In addition thereto, such employes shall be allowed actual necessary expenses while away from their regular assigned stations and paid the straight time rate of their regular assigned position for time used in traveling to and from the position relieved based upon actual time consumed, subject to a maximum of eight (8) hours travel pay for each twenty-four (24) hours en route."

Rule 19, Section (d)6 of the current agreement is a special rule which specifically provides for the handling accorded and compensation allowed the claimant under the circumstances here involved, therefore, it is clearly apparent that Rule 9 is not applicable to the instant claim.

It is a well-recognized principle of contract construction that special rules prevail over general rules, leaving the latter to operate in the field not covered by the former (Award 4507).

The petitioner is simply attempting to secure through an award of this Division a new agreement provision. Inasmuch as the petitioner's position cannot be sustained by any rule of the agreement the carrier respectfully submits that within the meaning of the Railway Labor Act, the instant claim involves request for change in the agreement, which is beyond the purview of this Board. It is a well-established principle that it is not the function of this Board to modify an existing rule or supply a new rule when none exists. To accept petitioner's position in this docket would definitely be tantamount to writing into the agreement a provision which does not appear therein and was never intended by the parties.

### CONCLUSION

The carrier asserts that it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support and requests that said claim be denied.

All data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

(Exhibits not reproduced).

**OPINION OF BOARD:** In this docket there is no material disagreement with respect to the facts involved. Claimant C. M. Berry was the successful bidder on a rest day relief position. He was notified by Assignment Notice No. 44 dated September 23, 1952 that he was being awarded the position. He continued on his prior position until September 29, 1952. Carrier did not permit him to assume his newly awarded position, but instead directed him to relieve agent-telegrapher at San Carlos from October 1, 1952 to November 7, 1952. After the latter date he reported on his position which had been awarded him on September 23.

The Organization contends that the Carrier violated the Agreement when it refused to allow Claimant to go on his new position on October 1, 1952. The Organization admits that under the provision of Rule 19 (d) 6 the Carrier could delay placing Claimant on his new position for as much as 30 days without penalty. However, the Organization contends that this rule assured the right of the Carrier to hold an employee on his prior position

where for some reason he could not be released at the time the assignment was made; that it was never the intent of the rule to permit the Carrier to move the employe to one or more relief jobs before permitting him to go on a newly acquired position.

It is admitted that Claimant was not permitted to take over his new position until more than 30 days had elapsed from the date of assignment. The Carrier paid Claimant \$2.00 per day for expenses from October 24 (30 days after date of assignment notice) to November 7, 1952.

The Carrier contends that Rule 19, Section (d) 6 applies, and that payment was made accordingly. Petitioner contends that Claimant became a regularly assigned employe on September 23, with the result that Rule 9 governs.

The basic issue involved here has been before this Division on a number of occasions. Award No. 3633 dealt with an almost identical situation involving the same parties as the instant case. Likewise Award No. 4515, also involving the same parties, dealt with a similar issue, although not as close to the instant case as that dealt with in Award 3633.

The instant case involves only one aspect not a part of the facts in Award 3633. In that case the Claimant was held for more than 30 days on his prior job, whereas in the instant case Claimant was required to work on a job other than his prior job for the period at issue, and before being permitted to go to his newly awarded job.

Whatever we may think of the equities, we are shown no rule which justifies a reversal of Award 3633 on this matter. Nor are we convinced that Award 3633 was so palpably wrong that a reversal is now justified. In view of the Division's prior holdings on this matter we must deny the claim now posed.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1957.